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10/824,457	04/14/2004	Robert Shaw	D0932-00402	6604
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/824,457	Applicant(s) SHAW ET AL.	
	Examiner Ryan D. Kwiecinski	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 33-35 is/are pending in the application.
- 4a) Of the above claim(s) 7, 10, 12, 15, 16 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8, 9, 11-14, 17, 19-30 and 33-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/29/2005 and 4/14/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Species I, Fig. 3A and 3B in the reply filed on 27 September 2007 is acknowledged.

Claims 1-6, 8-9, 11, 13-14, 17, 19-30, and 33-35 have been examined. Claims 7, 10, 12, 15-16, and 18 have been withdrawn for being directed to non-elected inventions.

### ***Double Patenting***

Applicant is advised that should claim 5 be found allowable, claim 8 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 27 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claim 27 is unascertainable as the claim depends from itself.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1,3-4,9,13,17,19-21,28-30, and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by US 6,402,415 B1 to Eberle, III.**

**Claim 1:**

Eberle discloses an anchor for installing a plank in a deck system comprising:

a base portion (117, Fig.9);

a plank-engaging portion (93, Fig.9) having at least one protrusion (95, Fig.9), and

at least one fastener aperture (103, Fig.9) having a longitudinal axis which is incline from the vertical (103, Fig.9) and extends through the plank-engaging portion and at least a portion of the base portion (131, Fig.9).

**Claim 3:**

Eberle discloses the anchor of claim 1, wherein the plank-engaging portion includes two curved protrusions (95,97, Fig.7) capable of engaging corresponding anchor-engaging grooves on a deck plank.

**Claim 4:**

Eberle discloses the anchor of claim 1, wherein the plank-engaging portion includes a substantially planar section (93, Fig.9), and wherein an entrance of the fastener aperture is located on the planar section (103, Fig.9).

**Claim 9:**

Eberle discloses the anchor of claim 1, wherein the fastener aperture is at an angle of between five and sixty degrees (Column 6, lines 10-12) from vertical.

**Claim 13:**

Eberle discloses a decking system comprising:

a plurality of anchors (91, Fig.9), each anchor having a base portion (117, Fig.9), a plank engaging portion (93, Fig.9) having at least one protrusion (95,97, Fig.9), and at least one fastener aperture (103, Fig.9) with a longitudinal axis disposed obliquely from a vertical plane (103, Fig.9) and extending through the base portion and a plank-engaging portion, and

a plurality of planks (21,23, Fig.9) including a side wall having an anchor-engaging groove (27,29, Fig.9) for cooperating with a corresponding protrusion of a corresponding anchor.

**Claim 17:**

Eberle discloses the decking system of claim 13, wherein the anchors include two protrusions (95,97, Fig.9), each protrusion having a top portion which serves as an entry point for a plurality of fastener apertures positioned intermittently along the length of the anchors.

**Claim 19:**

Eberle discloses a method of installing a deck system comprising:

providing a first plank (21, Fig.9) having an anchor-engaging groove (27, Fig.9),

providing a first anchor (91, Fig.9) having a plank-engaging portion (93, Fig.9) and a fastener aperture (103, Fig.9) having a longitudinal axis which is disposed obliquely from a vertical plane,

laying the first plank (Column 6, lines 6-23) on a decking joist (25, Fig.9),

inserting the plank-engaging portion of the first anchor into the anchor engaging groove of the first plank (Column 6, lines 6-23), and

inserting a first fastener (131, Fig.9) through the fastener aperture and into the decking joist (Column 6, lines 6-23).

**Claim 20:**

Eberle discloses the method of claim 19, wherein said inserting a fastener step comprises providing frictional contact between said fastener and said anchor (131, Fig.9), and between said anchor and said anchor-engaging groove (91,27, Fig.9), so as to automatically control the position of said anchor to create a tight joint without further contact with the anchor by an installer.

**Claim 21:**

Eberle discloses the method of claim 19, further comprising:

providing a second plank (23, Fig.9) having a first (29, Fig.9) and second anchor-engaging groove (Column 6, lines 6-23),

providing a second anchor (Column 6, lines 6-23) having a plank-engaging portion and a fastener aperture having a longitudinal axis which is disposed obliquely from a vertical plane (the same anchors 91, Fig.9 are used to install multiple planks),

laying the second plank on the decking joist (25, Fig.9) adjacent the first plank with the first anchor-engaging groove (29, Fig.9) of the second plank engaging the plank-engaging portion (97, Fig.9) of the first anchor, and

inserting the plank-engaging portion of the second anchor into the second anchor-engaging groove of the second plank (Column 6, lines 6-23; Fig.9), and

inserting a second fastener through the fastener aperture of the second anchor and into the decking joist (131, same as the first anchor, Fig.9).

**Claim 28:**

Eberle discloses a system for anchoring adjacent planar members to a base member comprising:

a plurality of anchors (91, Fig.9; the anchors are used at multiple points along each and in between each plank), each anchor having a base portion (117, Fig.9), a planar member-engaging portion (93, Fig.9) having at least one protrusion (95,97, Fig.9), and at least one fastener aperture (103, Fig.9) with a longitudinal axis disposed obliquely from a vertical plane (Fig.9) and extending through the base portion and planar member-engaging portion,

a plurality of planar members (21,23, Fig.9) including a side wall having an

anchor- engaging groove (27,29, Fig.9) for cooperating with a corresponding protrusion of a corresponding anchor (Fig.9), and  
at least one base member (25, Fig.9) into which the anchors are fastened.

**Claim 29:**

Eberle discloses the system of claim 28, wherein the planar members are planks which form a deck (Column 6, lines 20-23).

**Claim 30:**

Eberle discloses the system of claim 28, wherein the base member is a joist (Column 6, line 12).

**Claim 33:**

Eberle discloses the system of claim 28, wherein the anchors are substantially hidden (once the second plank is brought into contact, Fig.9, the anchor is substantially hidden) from view.

**Claims 25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,577,357 to Civelli.**

**Claim 25:**

Civelli discloses a decking anchor having a generally key-hole shaped cross-section (4, Fig.3), and a planar bottom surface (flat bottom of 4, Fig.3).

**Claim 26:**

Civelli discloses the decking anchor of claim 25 having an aperture



(aperture in which screw 26, Fig.4 is inserted) disposed therethrough from a top surface to said planar bottom surface.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 11, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,402,415 B1 to Eberle, III in view of US 2,362,252 to Ellinwood.**

**Claim 2:**

Eberle discloses the anchor of claim 1, but does not disclose wherein the anchor has substantially planar side walls, and wherein a cross-section of the plank-engaging portion is substantially circular or oval in shape.

Ellinwood discloses substantially planar side walls (the vertical sides of the base 24, Fig.2), and wherein a cross-section of the plank-engaging portion is substantially oval (25, Fig.2) in shape.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the anchor member with planar sides and an oval plank-engaging portion if this shape best secured the anchor into the

grooves in the planks. The oval shape fits into the curved grooves of the planks and the planar sides allows the planks to come in close contact with the anchors to form a secure structure.

**Claim 11:**

Eberle discloses the anchor of claim 1, but does not disclose wherein the exit point of for the fastener aperture is entirely enclosed within a bottom surface of the base portion.

Ellinwood discloses the exit point of for the fastener aperture is entirely enclosed within a bottom surface of the base portion (the nail exits the anchor through the bottom surface of the base, Fig.2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the apertures in the anchor of Eberle to exit through the bottom surface of the base as taught by Ellinwood. The aperture exiting through the base surface would allow the fastener to be in contact the anchor over a greater distance and better secure the anchor to the joist in the structure.

**Claim 14:**

Eberle discloses the decking system of claim 13, but does not disclose wherein the anchor-engaging groove of the planks extends substantially the entire length of the planks.

Ellinwood discloses anchor-engaging groove of the planks extends substantially the entire length (Fig.2) of the planks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed grooves in the planks of Eberle that extend across the whole length taught by Ellinwood in order to allow multiple anchors to be inserted between the adjacent planks at numerous locations between the planks. The anchors can be inserted anywhere along the length therefore creating easier installation.

**Claims 5-6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,402,415 B1 to Eberle, III in view of US 2004/0182034 A1 to Eberle, III.**

**Claims 5 and 8:**

Eberle '415 discloses the anchor of claim 1, wherein the anchor includes a first fastener aperture (103, Fig.7), and wherein the plank-engaging portion includes two curved protrusions (95,97, Fig.7), each curved protrusion having a substantially planar section (93, Fig.7), but does not disclose a second fastener aperture and wherein the planar section of each protrusion includes an entrance to a respective fastener aperture.

Eberle '034 discloses a second fastener aperture (321,322, Fig.16) and wherein the planar section of each protrusion includes an entrance (301, Fig.16) to a respective fastener aperture.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have formed the anchor with two fastener apertures in a

respective planar surface of the anchors taught by Eberle. An additional fastener aperture will more tightly secure the anchor to the adjacent joist.

**Claim 6:**

Eberle discloses the anchor of claim 5, Eberle '034 also discloses wherein the first and second fastener apertures are overlapping (a side view of the anchor will show the apertures are overlapping, Fig.16).

**Claims 22-24 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 2005/0028469 A1 to Grohman in view of US 6,578,341 B2 to Hoffmann et al.**

**Claim 22:**

Grohman discloses a decking system, comprising:  
a plurality of decking planks (14, Fig.3) disposed over supporting joists (12, Fig.1), each of said decking planks having first and second curvilinear side edge portions (24,22,26, Fig.3);  
a plurality of anchors (30, Fig.3) having first and second side surfaces (34,36, Fig.5) capable of frictionally mating between a first and second curvilinear side edge portion of adjacent ones of said decking planks;  
a fastener 40, Fig.3) disposed through said anchors for joining said decking planks to said supporting joists.

Grohman does not disclose fasteners disposed at an oblique angle from

the vertical.

Hoffmann et al. discloses fasteners disposed at an oblique angle (20, Fig.1) from the vertical.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have inserted the fasteners of Grohman at an oblique angle to the vertical as taught by Hoffmann et al. Installing fasteners at angles as opposed to vertically is notoriously well known in the art. The technique is known as toe nailing and the technique forms a tight joint between the anchor and the joist. The angle of the fastener will also secure the anchor at an angle towards the joist causing a more secure connection between the anchor and the planks.

**Claim 23:**

Grohman in view of Hoffman et al. discloses the decking system of claim 22, Grohman also discloses wherein a pair of adjacent decking planks are locked together by at least one of said anchors (Fig.1).

**Claim 24:**

in view of Hoffman et al. discloses the decking system of claim 22, Hoffmann et al. also discloses wherein each of said anchors has at least one aperture (aperture through which fastener 20 is inserted, Fig.1) therethrough disposed at an oblique angle from a vertical plane.

**Claim 34:**

Grohman in view of Hoffman et al. discloses the decking system of claim

22, Grohman wherein the anchors have a length that is about the width of the joists (Page 2, Table 1, Dimension J).

Floor joists are known in the art to be 2" x 8" wooden planks, so the width of the joist is typically 2". The table shows lengths of the anchors from 0.5" to about 2.5".

**Claim 35:**

Grohman in view of Hoffman et al. discloses the decking system of claim 22, Grohman wherein the anchors have a length that is less than the width of the joists (Page 2, Table 1, Dimension J).

Floor joists are known in the art to be 2" x 8" wooden planks, so the width of the joist is typically 2". The table shows lengths of the anchors from 0.5" to about 2.5".

**Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,577,357 to Civelli in view of US 6,578,341 B2 to Hoffmann et al.**

**Claim 27:**

As best understood Civelli discloses the decking anchor of claim 25, but does not disclose wherein said aperture has a longitudinal axis disposed at an oblique angle from vertical.

Hoffmann et al. disclose said aperture has a longitudinal axis disposed at an oblique angle from vertical (20, Fig. 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have inserted the fasteners of Civelli at an oblique angle to the vertical as taught by Hoffmann et al. Installing fasteners at angles as opposed to vertically is notoriously well known in the art. The technique is known as toe nailing and the technique forms a tight joint between the anchor and the joist. The angle of the fastener will also secure the anchor at an angle towards the joist causing a more secure connection between the anchor and the planks.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan D. Kwiecinski whose telephone number is (571)272-5160. The examiner can normally be reached on Monday - Friday from 9 am to 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571)272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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RDK

Robert Canfield  
Primary Examiner  
